IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4757 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASHOK SHIVLAL ASLIAS SAVAJIBHAI VAISHYA

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MR SJ DAVE, AGP for Respondent Nos. 1, 2 & 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 05/07/2000

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 18-4-2000 passed by the Police Commissioner, Ahmedabad City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner at length and also perused the material on record. But learned advocate for the petitioner has restricted his argument on the point that representation has been made by the petitioner on 1-5-2000 to the detaining authority and though it has been received by the authority on 2-5-2000, no communication has been received by the detenu regarding the said representation. He has also submitted that no affidavit has been filed by the respondents explaining satisfactorily regarding the same and, therefore, order of detention may be held to be illegal.

5. In the instant case, it appears that though representation has been made on 1-5-2000 by the petitioner to detaining authority, no communication was made to the petitioner regarding his representation. No affidavit has been filed either by the detaining authority or by the State regarding the same. It has been held in a judgment delivered by this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Ors. reported in 2000(1) G.L.H. 393 as under:

> "Before parting with the matter, we may observe that recently, we have come across few cases wherein no counter-affidavits are filed by the respondents. It is settled law that whenever an order of detention is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority".

Since no affidavit has been filed either by the detaining authority or the State regarding non-receipt of communication on the representation made by the detenu, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

6. In view of the above, the petition is allowed. The order of detention dated 18-4-2000 passed against the petitioner-detenu is hereby quashed and set aside. The detenu-Ashok Shivlal @ Savajibhai Vaishya is ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.DHOLAKIA,J.)

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